

July 2, 2002

To: Supervisor Zev Yaroslavsky, Chairman
Supervisor Gloria Molina
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Supervisor Don Knabe
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From: David E. Janssen
Chief Administrative Officer

FEDERAL LEGISLATIVE UPDATE

Congress has recessed for its Fourth of July recess and will return on July 8. At that time, it will face a lengthy list of Federal Fiscal Year (FFY) 2003 appropriations bills, including County priority bills which fund health, human services, and justice programs. Those bills as well as authorization bills may be acted on before both houses recess for the month of August. Because of the heavy workload, there are already rumors that Congress may return after the November elections for a "lame duck" session.

Senate Majority Leader Daschle (D-SD) has announced the Senate's July floor schedule, which will include a Medicare prescription drug bill and legislation addressing the corporate accounting scandals. Both bills are likely to consume most of the Senate floor activity for the entire month. Daschle made no mention of a schedule for appropriations measures. He also announced that the recently adopted Senate Finance Committee bill to reauthorize the Temporary Assistance for Needy Families (TANF) program is not likely to be brought to the floor until September.

Food Stamp Error Rate Penalties

On June 28, 2002, the United States Department of Agriculture (USDA) sent the attached letter (Attachment I), rejecting the State of California's proposal (Attachment II) for settlement of its fiscal penalty for FFY 2001 Food Stamp errors. The State's settlement plan included the following elements:

- A reduction in the State's error rate liability from \$114.3 million to \$43 million of which \$4.3 million would be paid immediately to the USDA, \$8.6 million would be reinvested in quality control improvements in FFYs 2003 and 2004 with the balance held at-risk and liable only if the State fails to reduce its error rate by approximately 25 percent a year over the next four years; and

- State commitments to improve quality control, including by implementing quarterly reporting, overseeing county efforts to improve performance, providing expert technical assistance to counties, and continuing to hold counties accountable for error rates exceeding tolerance levels.

The State argued that \$50 million of the proposed \$71 million reduction of its penalty is justified because implementation of LEADER was the main reason why Los Angeles County's error rate more than doubled from 10.6 percent in FFY 1999 to 22.9 percent in FFY 2001, and the County's error rate should drop as it gains more experience in implementing LEADER.

The USDA rejected the State's proposed settlement plan, and responded with a plan, which would make the State liable for the full \$114.3 million penalty. The USDA's response would require the State to repay half of that amount by July 31, 2003 with \$28.6 million payable by July 31, 2002. In addition, the State would be required to reinvest \$28.6 million in quality control improvements. The remaining \$28.6 million portion of the penalty would be held at risk with the State held liable if it fails to reduce its error rates to USDA-specified target levels during the next three years.

State staff, who shared the USDA's response with us, were not pleased with the USDA's counteroffer, and indicate that the State is considering how to respond. Under current State law, 90 percent of the State's total penalty would be passed through to counties. The County's Department of Public Social Services (DPSS) estimates that the County's share of the penalty would be about \$86.9 million.

As previously reported to your Board, the recently enacted Farm Bill (Public Law 107-171) contains provisions to reform the Food Stamp quality control system, including a provision which changes the methodology for computing a State's liability for Food Stamp errors, effective in FFY 2003. If that new methodology were used to compute California's liability for FFY 2001, the State's liability would be only \$17.9 million.

The County's Washington Advocates are working with advocates from other counties to pursue legislative language to direct the USDA to use the Farm Bill's methodology for computing Food Stamp error rate penalties for FFYs 2001 and 2002 as well as for future years. One potential vehicle for such language would be the FFY 2003 Agriculture Appropriations Bill, which is expected to be marked up in the House Appropriations Committee after Congress returns from its Fourth of July recess. In addition to coordinating advocacy efforts with other counties, the County's Washington Advocates, DPSS, and CAO staff also are coordinating with State officials, who share our concerns about the Food Stamp penalties facing California and its counties.

Temporary Assistance for Needy Families (TANF) Reauthorization

The Senate Finance Committee last week approved its version of a five-year TANF reauthorization bill in concept on a 13 to 8 vote with three Republicans voting for it. Committee staff now must draft the actual bill language reflecting the Committee mark up before the bill is reported by the Committee. Our summary and analysis of the bill is based on the information made available by the Committee.

Similar to H.R. 4737, the House version, the Senate bill would freeze annual TANF block grant funding at \$16.5 billion, the same as under current law. From the County's perspective, the Senate version is better than the House version because it generally provides states with greater flexibility over the use of TANF funds and it would provide much more funding for child care. Overall, it will be far simpler and less costly for states to meet TANF work participation rate requirements under the Senate bill than the House version. The Senate bill's provisions include:

Work Activities: Similar to the House bill, the Senate bill would require at least 70 percent of a state's TANF caseload to participate in work activities by FFY 2007. In contrast to the House, however, the Senate would give states an employment credit for TANF recipients who leave the rolls, become employed, and increase their wages and hours worked. The Senate bill caps the employment credit so a state's required work participation rate can be no less than 35 percent in FFY 2004, declining to 20 percent by FFY 2007.

Also, unlike the House bill which counts only recipients who participate in direct work or work-related activities for at least 40 hours a week towards work participation rate requirements, the Senate bill maintains the general requirement of 30 hours a week of work for most adults. Both bills require 24 hours of week of direct work activities though the Senate bill gives states and TANF recipients more flexibility than the House bill by expanding the list of what would count as work, including up to six months for substance abuse or mental health treatment, and English language proficiency classes. The Senate bill also increases the time allowed for vocational education from 12 months to two years, and allows a state to count post-secondary education as a work activity.

Both Senate and House versions include a "universal engagement" provision, requiring states to develop an individual employment plan for each work-eligible individual within 60 days of enrollment in TANF. Such a plan must include an assessment of the individual's skills, work history, and job readiness as well as a description of required work activities. In addition, the Senate version requires barriers to employment to be assessed and for the plan to address issues of child and adolescent well-being. The County's DPSS is concerned that the 60-day requirement could limit its ability to have CalWORKs recipients participate in up-front job search activities, particularly in relation to the more extensive plan requirements in the Senate bill.

Child Care: The Senate bill would increase the mandatory child care funding through the Child Care and Development Block Grant (CCDBG) by \$1 billion a year in FFYs 2003 through FFY 2005 and \$1.25 billion a year in FFYs 2006 and 2007. For the first \$1 billion a year in increased CCDBG funding, the Senate bill would not require states to provide matching funds at their Medicaid match rate (50 percent for California) in order to receive additional CCDBG funds. In comparison, the House bill, which increases mandatory CCDBG funding by only \$200 million a year, would require a state match. An amendment to increase CCDBG funding by an additional \$1.5 billion annually was offered and withdrawn at the Finance Committee mark up, with Finance Committee Chairman Baucus (D-MT) committing to support additional funds on the Senate floor.

Unlike the House version, the Senate bill contains a new requirement that any child care provider delivering child care services funded by TANF must comply with health and safety requirements applicable to CCDBG. This Senate requirement may be problematic as it could require health and safety requirements to be applied to currently license-exempt child care providers, who account for the majority of Stage 1 CalWORKs child care providers in the County. License-exempt child care providers typically are relatives of children on CalWORKs who provide care in their own homes or in the homes of the children.

Immigrant Benefit Restorations: The Senate Finance Committee restored a number of benefits to legal immigrants who lost eligibility under the 1996 welfare reform law. The Chairman's mark, which was approved, included a state option to provide TANF to legal immigrants, regardless of the date they entered the U.S., thus, lifting the five-year ban on the receipt of Federal means-tested assistance. California has used its discretion under current law to provide newly arrived immigrants with State-funded assistance which is countable towards the State's TANF maintenance-of-effort (MOE) requirement.

The Committee also adopted, 12-9, an amendment by Senator Graham (D-FL) giving states an option to provide non-emergency Medicaid and State Children's Health Insurance (SCHIP) benefits to legal immigrant children and pregnant women, regardless of the date they entered the U.S. This amendment would result in State General Fund savings in California because the State has been providing State-only non-emergency Medicaid services to such children and pregnant women. Another amendment by Senator Bingaman (D-NM) was approved which clarifies that states and localities may use their own funds to provide health services to all immigrants, regardless of their legal status.

First Responder Grants

The Senate Environment and Public Works Committee last week adopted a bill authorizing a \$3.5 billion block grant to states and localities for first responder initiatives. The new program would be administered by the Federal Emergency Management Agency (FEMA). The bipartisan bill (S. 2664), sponsored by Committee Chairman Jeffords (I-VT) and

Ranking Minority Member Robert Smith (R-NH), is similar to the Administration's first responder proposal.

Under the bill, \$3.34 billion would be made available to states and localities for first responders and \$160 million would be targeted to FEMA's 28 Urban Search and Rescue Task Forces. Each state would be allocated a base amount of \$15 million with additional amounts distributed according to risk factors such as population and critical infrastructure, as determined by the director of FEMA. The \$15 million minimum provides low population states with a disproportionately high amount of funds per capita. States would be required to pass through at least 75 percent of the first responder grants to local governments no later than 45 days after their receipt of funds.

Eligible activities would include planning, training, equipment, including interoperable communications, exercises, and constructing or upgrading emergency operation centers and training facilities. The Federal government would provide at least 75 percent of the share of the costs of first responder activities. The bill is silent on the type of cost sharing required of state and local governments.

While there is agreement between the Administration and Congress on the FFY 2003 funding level for first responder grants, there is no agreement on the legislative vehicle for authorizing and appropriating funds for the grants. The Administration's position has been that no legislation is needed to authorize the grants. Due to jurisdictional issues, Senate Commerce, Justice, State Appropriations Subcommittee Chairman Hollings (D-SC) has objected to the bill, primarily because it places the administration and jurisdiction over the program under FEMA, rather than the Justice Department. Neither Senate floor action on S. 2664 nor a House committee mark up of a House version have been scheduled.

Homeland Security Department

Last week, the House introduced the Administration's bill creating a Department of Homeland Security (H.R. 5005). The bill would reorganize more than 100 government agencies into the new department. With a September 11, 2002 target for completion, the measure may dominate a significant portion of the time of a number of committees in July. Twelve House committees will consider the legislation next week, with floor debate slated for the week of July 22, 2002.

After incorporating changes by various committees, the Senate Governmental Affairs Committee will hold a mark up of its version (S.2452) the week of July 15, 2002.

FFY 2002 Supplemental Appropriations Bill

House and Senate conference committee negotiations on the FFY 2002 supplemental funding bill (H.R. 4775) still await completion. As reported to your Board in early June, the bill contains a number of programs of County interest, including funding for first responders, election reform, and workforce training and employment. At issue is the bill's overall spending, with the Senate's \$31.5 billion measure about \$1.5 billion more than the House version. The Administration has threatened to veto any bill exceeding the House funding level.

FFY 2003 Appropriations

Compared to recent years, Congress has made very little progress on appropriations bills. To date, the House has passed the Defense and Military Construction appropriations bills. House appropriations subcommittees have adopted FFY 2003 funding for four other bills, with seven bills, including those funding health, human services, workforce development and justice programs still not scheduled.

The Senate has not adopted any appropriations bills and has only completed full committee action on the Interior and Military Construction bills. Because there is no budget resolution to guide the Congress, the Senate's overall allocation for spending is \$11 billion more than the House. Under the Senate's \$770 billion allocation, subcommittees with jurisdiction over Labor, HHS and Commerce, Justice, State received a total of \$7.5 billion more than their House counterparts. Although the Administration and House Republicans object to the Senate levels, the allocations were unanimously adopted by the Senate Appropriations Committee 28-0.

Medicaid Disproportionate Share Hospital (DSH) Payment Freeze

Last week, the House adopted Medicare prescription drug benefit bill (H.R. 4954). As reported to your Board in June, the bill contains a provision to restore a portion of the cuts in Medicaid DSH allotments to states which are slated to begin in FFY 2003. A different Medicare drug bill may be considered on the Senate floor in mid-July. The likelihood of a final Medicare bill reaching the President's desk is very uncertain due to the intense election year politics surrounding the issue. Items such as the Medicaid DSH restoration, however, could be removed from the bill and adopted as part of a bipartisan package of amendments later in the year.

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Medi-Cal Contracting Waiver

As previously reported to your Board, the State is continuing to negotiate with the Centers for Medicare and Medicaid Services (CMS) on a two-year extension of the Medi-Cal Selective Provider Contracting Program (SPCP) waiver, which enables the State to operate the SB 1255 supplemental hospital payment program. The budget neutrality of the State's SPCP waiver continues to be a stumbling block with the CMS questioning the counting of Medi-Cal managed care savings in the computation of the waiver's budget neutrality. We understand that the CMS also has raised questions on past Medi-Cal payments under the SB 1255 program, which relate to the treatment of managed care savings and the timing of the drawdown of Federal Medicaid funds. Health providers are working with the State's Congressional delegation on a bipartisan delegation letter to send to Health and Human Services Secretary Tommy Thompson in support of the State's waiver request.

We will continue to keep you advised of any new developments.

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Attachments

c: Executive Officer, Board of Supervisors
County Counsel
All Department Heads
Legislative Strategist